

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

YITZCHOK LEBOVITS and
CHANA SHAPIRO-LEBOVITS, on
their own behalf and on behalf of their
daughters E.L., a minor, and A.L., a
minor; and
BAIS YAAKOV ATERES MIRIAM, a
New York religious corporation,

Plaintiffs,

v.

ANDREW M. CUOMO, individually
and in his official capacity as Governor
of the State of New York;
BILL DE BLASIO, individually and in
his official capacity as Mayor of the City
of New York;
LETITIA JAMES, in her official capac-
ity as Attorney General of the State of
New York;
HOWARD A. ZUCKER, in his official
capacity as Commissioner of the New
York State Department of Health;
CITY OF NEW YORK; and
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE,

Defendants.

Civil No. 1:20-cv-01284-GLS-DJS
Hon. Gary L. Sharpe

**PLAINTIFFS' APPLICATION FOR
ORDER TO SHOW CAUSE
FOR TEMPORARY RESTRAINING
ORDER**

Plaintiffs apply to this Court for issuance to defendants, Governor Andrew Cuomo, Attorney General Letitia James, New York City Mayor Bill de Blasio, Howard Zucker, Commissioner of the New York Department of Health, the City of New York, and the New York City Department of Health and Mental Hygiene, of an order to show cause that includes a temporary restraining order under Rule 60(b) of the Federal Rules of Civil Procedure.

A proposed form of order is being filed contemporaneously with this application. Also filed contemporaneously are:

1. A declaration from Plaintiffs' counsel, Eric C. Rassbach, addressing why Plaintiffs must proceed by order to show cause;
2. A memorandum of law in support of Plaintiffs' application;
3. The declarations of Dr. Timothy P. Flanigan, Yitzchok Lebovits, Rabbi Nathan (Nosson) Neuman, and Eric C. Rassbach, and accompanying exhibits in support of Plaintiffs' application.

Plaintiffs are seeking an order to show cause for a temporary restraining order preventing Defendants from enforcing executive orders, implementing orders, and plans that bar the opening of a religious school for in-person education. As explained in the supporting papers, the plaintiff school, Bais Yaakov Ateres Miriam, has implemented stringent protocols to minimize the risk to students and staff of contracting COVID-19 through in-person learning. Defendant Governor Cuomo's Executive Order and related actions of state and local official have caused irreparable constitutional injury by hampering the rights of parents to direct their children's religious and educational upbringing. Defendants' actions have also targeted Orthodox Jewish communities, violating the Free Exercise Clause's neutrality requirement. Defendants' actions are also not generally applicable. Plaintiffs will suffer irreparable harm in the absence of a temporary restraining order and preliminary injunction, the balance of hardships tips strongly in their favor, and protecting their constitutional rights is in the public interest.

Plaintiffs' counsel will email electronic copies of this application for an order to show cause, the supporting declaration of Eric C. Rassbach, the memorandum in support of this application for an order to show cause, and its supporting declarations to Defendants via their attorneys: Chris Liberati-Conant, New York State Office of the Attorney General; and Melanie Sadok, Ellen Parodi, and Hilary M. Meltzer, New

York City Law Department. Plaintiffs' counsel will also serve Defendants under Fed. R. Civ. P. 5 in accordance with the accompanying certificate of service.

For the reasons stated above, and as more fully explained in the supporting papers, the Court should issue an order to show cause and temporary restraining order.

Dated: October 19, 2020

Respectfully submitted,

s/ Eric C. Rassbach

Mark L. Rienzi (admission to be sought)
Eric C. Rassbach (N.D.N.Y Bar No. 302836)
The Becket Fund for Religious Liberty
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Josh Blackman (admission to be sought)
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Houston, TX 77002
Telephone: (202) 294-9003

Counsel for Plaintiffs

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**[PROPOSED] ORDER TO SHOW
CAUSE FOR A TEMPORARY
RESTRAINING ORDER**

Upon Plaintiffs' motion for a temporary restraining order, dated October 19, 2020, and accompanying papers and declarations, and the Court, having reviewed the motion and supporting papers, and having found sufficient reason being alleged and good cause appearing therefore, it is hereby:

ORDERED that, pending further order of this Court, Defendants, Governor Andrew Cuomo, Attorney General Letitia James, New York City Mayor Bill de Blasio,

Howard Zucker, Commissioner of the New York Department of Health, the City of New York, and the New York City Department of Health and Mental Hygiene, show cause why the Court should not, under Rule 65 of the Federal Rules of Civil Procedure and for the reasons set forth in Plaintiffs' memorandum of law in support of its application for an order to show cause, temporarily restrain them from (a) enforcement against Plaintiffs, Bais Yaakov Ateres Miriam, Yitzchok Lebovitz, and Chana Shapiro-Lebovits, the directives of the Executive Order 202.68 and any orders related thereto; or (b) restricting in any manner, with respect to Plaintiffs Bais Yaakov Ateres Miriam the ability to conduct in-person learning in accordance with the school's approved reopening plan; and it is further

ORDERED that, pending the Court's resolution of Plaintiffs' motion for a preliminary injunction, Defendants, their representatives and agents, and all persons acting in concert or in participation with them, or having notice, shall be temporarily restrained and enjoined from enforcing restrictions on in-person education against Plaintiff Bais Yaakov Ateres Miriam's provision of in-person education in accordance with the school's approved reopening plan; and it is further

ORDERED that Defendants, through their attorneys, show cause before this Court, at Room ____, 445 Broadway, Albany, New York 12207, in the County of Albany and State of New York, on the ____ day of ____, 2020, at ____ o'clock in the ____ thereof, or as soon thereafter as counsel may be heard, why an order should not be issued, pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining Defendants, their representatives and agents, and all persons acting in concert or in participation with them, or having notice, from enforcing restrictions against Plaintiff Bais Yaakov Ateres Miriam's provision of in-person education in accordance with the school's approved reopening plan, until such time as the Court resolves Plaintiffs' application for relief in this case; and it is further

ORDERED that this order is binding on the parties and their officers, agents, servants, employees, and attorneys, as well as all persons who are in active concert or participation with any of the foregoing; and it is further

ORDERED that sufficient cause having been shown, service of this Order and all of the papers submitted in support thereof shall be made on Defendants' counsel and deemed effective if it is completed on or before the ____ of October, 2020; and it is further

ORDERED that Defendants' answering papers on the motion for a preliminary injunction, if any, shall be filed with the Clerk of this Court and served upon the attorneys for Plaintiffs via ECF, by no later than _____, and that any reply by Plaintiffs to be filed and served by ECF by _____, and it is further,

ORDERED that the temporary injunction contained in this order shall expire in fourteen days, unless vacated or extended by further order of this Court.

IT IS SO ORDERED.

Dated: _____
Albany, New York

Hon. Gary L. Sharpe
United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, I served the foregoing application and order, the supporting memorandum and all supporting declarations, as follows:

- (a) by email, per agreement with counsel, as to Defendants Andrew M. Cuomo and Letitia James; and
- (b) by first-class mail, postage prepaid, on the following:

Howard A. Zucker
Commissioner
New York Department of Health
Corning Tower Building
Empire State Plaza
Albany, NY 12237

The City of New York
100 Church Street
New York, NY 10007

Bill de Blasio
Mayor of the City of New York
City Hall
New York, NY 10007

New York City Department of
Health
and Mental Hygiene
125 Worth Street
New York, NY 10013

s/ Eric C. Rassbach
Eric C. Rassbach
N.D.N.Y. Bar Number: 302836
Attorney for Plaintiffs
The Becket Fund for Religious Liberty